IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Revision No. 581/2001
(Old No. 2459/1984)

Bramha Datt Tewari S/o Ram Bharose Tewari R/o Industrial Estate Kashipur, Nainital ….Revisionist.

Vs.

State of U.P. …..Respondent.

Sri Chandra Mauli Shah, learned counsel for revisionist.
Learned A.G.A. for respondent.

Date: 24-11-2003.

Hon'ble Irshad Hussain, J.

This is a criminal revision under section 397 of the Code of Criminal Procedure against the judgment dated 14.11.1994 passed by the then Additional Sessions Judge,Naianital, in criminal appeal No. 22 of 1983 confirming the judgment of conviction passed by the Judicial Magistrate, Kashipur in criminal case No. 70 of 1982, whereby the revisionist-accused Brahma Datt Tewari was held guilty and sentenced under section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') to undergo six months R.I. and a fine of Rs. 2000/-. In appeal the sentence of six months R.I. was up-held whereas the fine was reduced to Rs. 1000/-.

2- Brief f acts of the case are that on 26-7-1981 Food Inspector purchased 375 grams of mustard oil from the revisionist after payment of its price and thereafter divided the same in three equal parts, one of which per rule was sent to Public Analyst. The sample was found adulterated, per report of the Public Analyst on account of presence of excess Oleic Acid. Sanction was accorded and complaint against the revisionist was filed by Food Inspector. In the trial before the learned Magistrate prosecution examined two Food Inspector M.S. Som (P.W.1) and clerk of the office of C.M.O. C.D. Bhatt (P.W.2). In defence Dev Pratap Singh (D.W.1) was examined to show that he had no witnessed the purchase and taking sample of mustard oil from the revisionist, although he admitted his signature on notice Form No. VI (Ex. Ka.1) which was served on the revisionist by the Food Inspector (P.W.1) and on the receipt (Ex.Ka.2) also signed by the revisionist . The revisionist had denied the allegations of the prosecution and claimed that he has been falsely implicated in the case. The learned Magistrate believed the evidence of prosecution and had convicted

the revisionist as mentioned above, per judgment and order dated 15.1.1983, which was partly modified by the appellant judgment as stated above.

3- I have heard the learned counsel for the parties and have perused the record with the help of both of them.

4- The learned counsel for the revisionist submitted that the evidence of P.W.1 did not prove that the sample of mustard oil was packed and sealed in the manner as comtemplated by Rule –16(d) of the Prevention of Food Adulteration Rules, 1995 (for short 'the Rules') as well as manner of dispatching of the container of the sample as provided under the Rule-17. Perusal of the evidence of P.W.1, M.S. Som does not admit of any inference that there was any infraction of the required procedure and pre-caution in packing and sealing as well as in dispatching of the samples of the Public Analyst and two sealed packets to the Local (Health) Authority. I need not enter into detail discussion because the learned trial Magistrate and the Appellate Court have considered the evidence in proper perspective and no perversity therefore could be pointed out in the evidence.

5- Compliance of section 10(7) of 'the Act' was also said to have not been made in this case. However the evidence of D.W.1, Dev Pratap Singh assail the argument advanced on behalf of the revisionist. According to the Food Inspector this man was the public witness when the sample was taken from the revisionist. This witness admitted his signature but gave out that the receipt and Form No.-VI were not filled in before him. He is a literate person and I am not inclined to believe that he could have been made to sign on blank papers without any endorsement having been made at the spot when the mustard oil was purchased from the revisionist. The courts below have also rightly rejected the contention of the revisionist in this regard.

6- In regard to the compliance of provision of section 13(2) of 'the Act' it was argued that the revisionist was not served with the report of the Public Analyst and, therefore, he was deprived of the opportunity ot have the another sample analysed by the Central Food Laboratory. Again the submission find no support from the evidence on record. Ex.Ka.11 is the copy of the report of the Public Analyst which was sent to him by registered post and it was returned by the postman on 29-3-1982 with the endorsement that the addressee had left without leaving his address. There is no dispute that the correct address is mentioned in the registered letter. Nothing has been shown from the side of the revisionist that on 26.3.1982 he was away from his address for some work or

engagement. It is thus evidence that the registered there was sent on correct address and not only this the Food Inspector (P.W.1) offered the copy of the report of the Public Analyst to the revisionist on his appearance in the court but he refused to accept the same. The evidence of P.W.1 is definite and cogent on this point and admits of no adverse inference. The revisionist never applied for sending the second part of the sample to Central Food Laboratory for analyses. Therefore, no prejudice was caused to the revisionist and the compliance of the above provision was also made in this case. On the facts of the case the the decision of Allahabad High Court in the matter of **Madan Vs. State of U.P.; [1999(2)JIC 786(All.)]** pressed into service by the learned counsel for the revisionist also do not come to the rescue of the revisionist. The reason is that in the reported case the conviction was set aside when it was found the Food Inspector had only stated that the formalities of section 13(2) of 'the Act' have been complied with and no material was produced to support the evidence. However, in the present case there is also documentary evidence as mentioned above to support the evidence of the Food Inspector regarding the compliance of the said provision.

7- The learned counsel also assailed the legality of the sanction (Ex.Ka.6) accorded by the C.M.O., Nainital under section 20 of 'the Act' dated 19-2-1982 by pointing out that the same was given without application of mind in a mechanical way. The submission in this regard carry no conviction because the sanction is not in printed form but the same was got prepared giving the relevant facts of the case and necessity to have the revisionist prosecuted in view of the sample of mustard oil being found adulterated. Such a sanction could only be given if the sanctioning authority applies his mind to the relevant facts of the case and, therefore, compliance of provision of section 20 of 'the Act' was also made in this case.

8- Lastly the learned counsel for the revisionist argued that the sample was allegedly taken on 26-7-1981 and the judgment by the trial Magistrate was delivered in the year 1983 and further that the appeal was disposed of in the year 1984 but the present revision came up for hearing and disposal after about 19 years and considering the long delay, minimum sentence may not be awarded to meet the ends of justice which require speedy trial. It was also submitted that the revisionist is not reported to have been involved in any criminal activity thereafter and that the courts have been taking lenient view under these circumstances even if minimum sentence is provided for an

offence under ‘the Act’. The learned counsel in support of his submission placed reliance on the decision of Apex Court in **Municipal Corporation of Delhi Vs. Tek Chand Bhatia; A.I.R. 1980 Supreme Court 360** and a decision of Allahabad High Court in the matter of **Kishori Lal Vs. State of U.P.; [2000(2) JIC 741(All)**. Having gone through these decisions and the long delay caused in the disposal of this revision during which the revisionist had been in agony, I feel it just to reduce the sentence of the revisionist to the period already undergone but to enhance the fine to a sum of Rs. 4000/- instead of Rs. 1000/- imposed by the Appellate Court.

9- In view of above the revision is partly allowed. The conviction of the revisionist is maintained. However, the sentence is reduced to the period already undergone and he is directed to pay a fine of Rs. 4000/- (four thousand) within a period of two months from the date of the receipt of the copy of this judgment. In default of payment of fine, the revisionist shall have to undergo to the sentence of six months R.I. as was awarded by the trial court.

10- Let the record be sent back to the trial Magistrate for compliance.

(Irshad Hussain, J.)

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